

ANONYMOUS

Witness name:

GRO-B

Statement No.: WITN2151021

Exhibits: WITN2151022-027

Dated: 11th August 2022

INFECTED BLOOD INQUIRY

EXHIBIT WITN2151023

Date 26 April 1999

Your Ref

Our Ref

E-mail

GRO-B

12/1/JA/SF

JAbbot@

GRO-C

GRO-B

GRO-B

PAULL &
WILLIAMSON'S

SOLICITORS

13 North Bank Street
Edinburgh EH1 2LP

DX ED26

Telephone +44 (0)131 226 6180
Fax +44 (0)131 226 6797
www.paul-williamsons.co.uk

If you remember when we last spoke it was agreed that we would send a set of papers to Paul Saxon of Deas Mallen Souter in Newcastle. I have now had a very helpful letter from Mr. Saxon dated 26th March and attach a copy. I apologise for the delay in passing this on to you.

You will see that he expresses his surprise about Professor Preston's conclusion, but highlights the difficulties that you and I have discussed about proving negligence in a situation where there is a respectable body of opinion, as exemplified by Professor Preston, that **GRO-B** treatment was not inappropriate.

It does look very much as though **GRO-B** case is a border line one, and the fundamental question for you is whether you wish to attempt to progress matters by obtaining a second opinion. We have tried and failed to persuade the Scottish Legal Aid Board that they should fund that exercise, and regrettably, nothing Mr. Saxon was able to tell us from his own experience of these cases, is likely to be of assistance in persuading them to change their mind.

In my letter of 23rd October I explained to you the importance of raising any proceedings in relation to this matter prior to the expiry of three years from **GRO-B** 16th birthday. If no legal proceedings have been raised and are in court by that date, **GRO-B** will almost certainly have lost his right to pursue any claim. I am conscious that this is a very difficult decision. What you now have to decide without too much further delay is whether you wish to incur the expense, privately, of obtaining a second opinion from another expert. Such an opinion might enable you to persuade the Legal Aid Board to fund an action, although in

Partners

G. Bruce Smith
Leslie S. Dalgarno
George Alpine
S. deey Barrie
Douglas Murray
Alan R. McEwenGordon A. Duncan
Lesley A. Gray
Douglas G. Abernethy
James K. Tierney
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Gordon B. Davidson
Kenneth M. RossScott M. Harrison
Sean A. Saluja
James G. C. Stark
Margaret M. Gibson
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Scott M. Allen

Associates

Jacqueline A. Taylor
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Rona M. Jamieson
Flanie Fairclough-Buck
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Stephen A. Miller
Gordon C. Steele

the light of Professor Preston's opinion, which of course they have seen, they may still take the view that your chances of success are not sufficiently good to justify the expenditure of public money.

Please have a think about this and let me know what you decide.

In the meantime, Mr. Donald of the Solicitors' Hepatitis Group continues to battle away with the Board, and I attach a copy of his letter to me of 11th February, again with apologies for not letting you have this earlier.

I look forward to hearing from you.

Yours sincerely

GRO-C

JEAN ABBOT

Encs.

Our Reference: JA?SF GRO-B 355001

Our Reference: PS/WM/Misc

26 March 1999

Jean Abbot
 Paull & Williamsons
 DX ED261
 Edinburgh

Dear Ms Abbot

GRO-B

Thank you for your letter of 26th November 1998 with enclosures. I apologise for taking so long to get back to you.

This is a very difficult case. You have tried very hard to get Professor Preston to pin his colours to the negligence mast. It is clear from the correspondence that although he is unhappy with GRO-B treatment he is not prepared to call it negligent.

I have discussed this case at some length with my partner Tony Mallen. We are both surprised by Professor Preston's conclusion. We both feel that by July 1993 a child presenting with mild haemophilia should have been treated with cryoprecipitate rather than Factor VIII concentrate in the absence of evidence of severe bleeding. That is irrespective of the diagnosis of haemophilia A or von Willebrand's disease. It is true to say, however, that many physicians believe any bleed in a GRO-B month old child with mild haemophilia is potentially serious.

Based on my experience I think it likely that if experienced Counsel in England had been asked to advise the English Legal Aid Board he would have recommended that a second opinion be obtained.

Having said that, of course, if Professor Preston believes the treatment was not negligent it is likely the defendants will be able to muster a respected body of medical opinion which shares his view.

I should also add that my understanding is Scottish Factor VIII concentrate in 1983 (assuming GRO-B received Scottish Factor VIII concentrate) was considered relatively safe. In other words, in the light of knowledge available at that time the risk if infection may not have been considered as great as it



**DEAS
 MALLEN
 SOUTER**

S O L I C I T O R S

ELDON CHAMBERS
 23 THE QUAYSIDE
 NEWCASTLE UPON TYNE
 NE1 3DE

DX: 61085

Telephone: (0191) 221 0898

Fax: (0191) 232 0930

E Mail No.
 advice@dms-law.co.uk

P A R T N E R S

ANTHONY D. DEAS
 ANTHONY MALLEN
 KEVIN R. SOUTER
 MARY ANN CHARLES
 CHRISTOPHER JUDD
 MICHAEL J. BIRCH
 BLAINE WARD
 PAUL SAXON

GRO-C



CONTINUATION

would have been in England. That may be something Professor Preston has taken into account.

I hope this is helpful, although I confess I am not sure how **GRO-B** can take the matter further. A second opinion may well agree with Professor Preston, which may at least allay any doubt in **GRO-B** mind. If it does not that may merely serve to underline the borderline nature of the case and the difficulty you are likely to face in establishing negligence. Whether the Scottish Legal Aid Board would then be prepared to reinstate the certificate you are better able to judge.

If there is anything you wish to discuss on the telephone please do not hesitate to call.

Yours sincerely

GRO-C

Paul Saxon

12 FEB 1999

GRO-C

FYFE IRELAND

WS
S O L I C I T O R S

DATE: 11th February, 1999

Messrs Paul & Williamsons
Solicitors
DX ED261
EDINBURGH

ORCHARD BRAE HOUSE
30 QUEENSFERRY ROAD
EDINBURGH EH4 2HG
TELEPHONE 0131-343 2500
FAX 0131-343 3166
EMAIL mail@fyfeireland.com
WEB SITE www.fyfeireland.com

DX ED23

OUR REF: BGD/PMC/SO883.001

YOUR REF: JA/SF GRO-C 355001

Dear Sirs

Solicitors Hepatitis Group

I refer to previous correspondence and by way of a simple method of updating you on the current situation I enclose a copy of a letter I have today sent to Mr Graeme McKinstry, Solicitor, Ayr. I shall let you know when any more material development occurs.

Yours sincerely

GRO-C

/// Brian G Donald
Consultant
Chairman of Group

PARTNERS: ANDREW CUBIE WS, ALISTAIR J WILSON WS, MALCOLM J GILLIES, STEVEN A KERR WS, GREIG HONEYMAN WS, MORAG L RADCLIFFE, KATHRINE E C MACKIE SSC,
JAMES I ROSCOE WS, ANDREW TAYLOR, STEPHEN J GIBB WS, MICHAEL P FITZGERALD, MICHAEL D P STEPHEN, MIRIAM FOGARTY

ASSOCIATES: PAULA A ARNOTT, SUSAN CLUBE, SAMANTHA M CORMACK, FIONA W CUMMING, DOMINIC C HARRISON SSC, GAVIN I C MACLEAN,
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CONSULTANTS: BRIAN G DONALD, PETER J H SIMPSON WS PARTNERSHIP SECRETARY: ALAN W MCGHIE CA

LONDON OFFICE TELEPHONE 0171-253 5202 FAX 0171-253 5525

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WITN2151023_0006

9th February, 1999

Graeme McKinstry Esq
The McKinstry Company
Solicitors
DX AY8
AYR

*

BGD/PMC/SO883.001

GMK/DM/010151

Dear Mr McKinstry

Solicitors Hepatitis Group (Scotland)

I thank you for your letter of 5th inst and note your request for an update.

The English action is proceeding in the High Court in London and at last indeed only a few days ago I received a letter after lodging a serious complaint with the Chairman of the Scottish Legal Aid Board herself. I have now received a response which is far from satisfactory in all the circumstances but at least it indicates that pending a decision being taken with regard to the information supplied (more than 18 months ago) by the English Board new claimants will after all be allowed an increase in authorised expenditure so that they can join the Group. I have responded that I am totally dissatisfied with the Chairman's response bearing in mind the gross and unexplained delay in making any decision whatever to the disadvantage of the Scottish claimants and indeed discrimination given the different treatment which is being afforded to the English and Welsh claimants. I had in fact indicated that if no decision is to be forthcoming I will require to consider seeking judicial review of the Board's failure to decide and this has not gone down well. Nevertheless I will certainly follow that course should no decision be made in the very near future. They are very much founding their attitude on the fact that Professor Zuckerman who was the expert instructed by me under legal aid auspices, gave a negative opinion insofar as the Scottish claimants are concerned. The point I made 18 months ago however is that in England, six or seven other expert opinions have been received which have prompted the English Legal Aid Board to allow not only a serious amount of legal aid funds to be used obtaining such reports and continuing the generic investigations but also were sufficient to persuade the English Board to allow the test action to proceed in the High Court in London. I have also pointed out that I worked very hard over the period of 6 months prior to October 1997 to ensure that the English Board information was passed directly to the Scottish Board and yet some 18 months later that is from October 1997 no progress whatever has been made and no explanation has been given beyond the comment that "it has taken us longer than anticipated".

In/...

February, 1999

- 2 -

In any event that is the current state of the situation and I will keep you and the other members of the Group advised when any further letter is received from the Board Chairman or else if an application for legal aid for judicial review has to be lodged. The whole situation is extremely difficult because as you know I am truly working without funding although now that new claimants are after all to be allowed to have increased authorised expenditure their contributions may help to allay the costs to me in doing the work.

Yours sincerely

GRO-C

Brian G Donald
Consultant

Date 26 May 1999

Your Ref

Our Ref

E-mail

GRO-B

12/1/JA/SF

JA5501@

GRO-C**GRO-B****GRO-B**

Many thanks for your letter of 20th May. I attach a copy of a letter which I have sent to Dr. Mitchell. I have sent an identical letter to Dr. Winter, and we will see how they respond.

I read with interest the copy "Herald" article which you enclosed with your letter, and in particular, the paragraph to which you drawn my attention regarding the profession's state of knowledge about factor VIII in the 1970s. These are points which we can raise with whomever we decide to instruct. I will let you know when I receive a response.

Given the decision you have taken to fund a further opinion privately, I do not think it is appropriate that **GRO-B** remains on legal advice and assistance and I am taking steps to have our account made up and rendered to the Scottish Legal Aid Board.

Yours sincerely

GRO-C

JEAN ABBOT

Partners

G. Bruce Smith
Leslie S. Dalgarno
George Alpin
S. Gray Esq.
Douglas Murray
Alan R. McNiven

Gordon A. Buchan
Lesley A. Gray
Douglas G. Abernethy
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Kenneth M. Ross

Scott M. Harrison
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Richard Goodfellow
Scott M. Allan

Associates

Jacqueline A. Taylor
Jean E. W. Abbot
Rona M. Jamieson
Elaine Farquharson-Black
Clive Phillips
Lynne A. Stewart
Lesley E. Currie
Stephen A. Millar
Gordon C. Steele

Consultants: I. M. S. Park CBE Marion N. McDonald

Prof. Jeremy Rowan-Robinson (Planning & Environment); Jack G. M. Joyce (Oil & Gas); George A. Boulton (Public Administration)

WITN2151023_0009

26 May 1999

GRO-B

12/1/JA/SF

JAbbot@

GRO-C

Copy

Dr. V E Mitchell
 Leicester Care Centre
 Leicester Royal Infirmary
 Infirmary Square
 LEICESTER LE1 5WW

Dear Dr. Mitchell

GRO-B

We are instructed through his mother, GRO-B to act on behalf of GRO-B who is now 17 years of age. As an infant, GRO-B developed Von Willibrandt's disease. In the course of about 1983 to 1985, he received injections of blood products at the GRO-B Hospital, Edinburgh. GRO-B now suffers from the virus known as Hepatitis C. This is presently asymptomatic, but GRO-B parents have been advised that symptoms may develop, and that there is a possibility of liver damage.

GRO-B parents have been advised that there is no doubt that the virus was caused by the blood products received. We have instructions to obtain an expert opinion as to whether his present condition results in any way from inappropriate treatment. We would expect to receive the consent of the Scottish Health Service Central Legal Office to the release of GRO-B medical records to a nominated expert and, if you are willing to assist us in this matter, it should be possible to make arrangements to have the records transmitted to you.

We should be grateful if, in the first instance, you would let us know whether the subject matter of this problem lies within your own particular area of expertise and, if so, whether you would be willing to provide us with an expert report. If so, it would be useful to have a copy of your curriculum vitae and an indication of your likely fees in the matter.

We/

GRO-B

WITN2151023_0010

We look forward to hearing from you. If you require further information, please feel free to contact Jean Abbot at this office.

Yours faithfully